

COASTAL CONSERVANCY

Staff Recommendation
October 18, 2012

BARBONI RANCH HICKS VALLEY II CONSERVATION EASEMENT

Project No. 11-012-01
Project Manager: Su Corbaley

RECOMMENDED ACTION: Consideration and possible Conservancy modification of the Conservancy's March 29, 2012 authorization by authorizing the additional disbursement of up to \$1,574,000 in funds, received by the Conservancy from the California Department of Transportation, to the Marin Agricultural Land Trust for the acquisition of a conservation easement over an additional 204 acres of the 1,194-acre Barboni Ranch, for pre-acquisition planning activities, and to fund an endowment for the perpetual management of California Red-Legged Frog dispersal habitat on the ranch.

LOCATION: Hicks Valley, west Marin County (Exhibit 1)

PROGRAM CATEGORY: San Francisco Bay Conservancy Program

EXHIBITS

Exhibit 1: [Project Location and Site Map](#)

Exhibit 2: [March 29, 2012 Staff Recommendation](#)

Exhibit 3: [204-acre CRLF Mitigation Area](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31160-31165 of the Public Resources Code:

“The State Coastal Conservancy hereby modifies its March 29, 2012 authorization, by authorizing acceptance of up to one million five hundred seventy-four thousand dollars (\$1,574,000) in funds from the California Department of Transportation (Caltrans) and the disbursement of those funds to the Marin Agricultural Land Trust (MALT) for the acquisition of a conservation easement over an additional 204 acres of the 1,194-acre Barboni Ranch (Marin County Assessor parcel nos. 125-020-11, -12, -13, -14), for pre-acquisition activities, and to fund an endowment for the perpetual management of California Red-Legged Frog dispersal habitat on the ranch.

This authorization is subject to the conditions imposed by the Conservancy's March 29, 2012 authorization, specified in the staff recommendation attached as Exhibit 2 to the staff recommendation accompanying this resolution, and the following additional conditions:

1. Prior to the disbursement of any funds, the Conservancy, through its Executive Officer, and Caltrans shall execute an agreement for the use and management of Caltrans funds.
2. Prior to the expenditure of any Caltrans funds for the acquisition, MALT shall submit for review and approval of the Conservancy's Executive Officer a Resources Management Plan for the perpetual stewardship of the 204 acres protected by the conservation easement acquired with the Caltrans funding.
3. The purchase price of the conservation easement shall not exceed fair market value, as established in an appraisal, provided to Caltrans for review and approval, and approved by the Department of General Services."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that disbursement of Caltrans mitigation funds for the acquisition and long-term management of 204-acres of California Red-Legged Frog habitat on the Barboni Ranch is consistent with the Conservancy authorization and findings adopted on March 29, 2012 and with the staff recommendation of that date, attached as Exhibit 2 to the accompanying staff recommendation."

PROJECT SUMMARY:

As described in the March 29, 2012 staff recommendation (Exhibit 2), the project will result in the acquisition of an agricultural conservation easement over the 1,194-acre Barboni Ranch in west Marin County. The proposed authorization will provide the Marin Agricultural Land Trust ("MALT") with additional funds received by the Conservancy from the California Department of Transportation (Caltrans) to complete the project by protecting a specific 204-acre area within the original 1,194 acres described in the March 29, 2012 staff recommendation, as shown in Exhibit 3. The 204-acre area would be protected in its current state for California Red-Legged Frog ("CRLF") and, as required by Caltrans, would be managed according an approved CRLF Resources Management Plan under the terms of the conservation easement. The Caltrans funds will also be used for pre-acquisition planning activities for the CRLF habitat, and an endowment to be held in trust by MALT for the perpetual management of the 204 acres.

The Caltrans funds are derived from a highway improvement mitigation requirement. Caltrans has a project to add High Occupancy Vehicle lanes to U.S. Highway 101 from the junction of State Route 37 in the City of Novato to just north of the Corona Road overcrossing in the City of Petaluma, also known as "the Marin Sonoma Narrows", or "MSN". The U.S. Fish and Wildlife Service ("USFWS") has required Caltrans to provide mitigation to offset impacts from the MSN project, in the form of 204 acres of CRLF dispersal habitat. USFWS and Caltrans have selected a 204-acre portion of the Barboni Ranch as suitable for the required CRLF mitigation. Caltrans will provide funding for the Barboni Ranch project through a grant to the Conservancy; this

grant will include costs of acquisition, pre-acquisition planning activities, MALT's cost for long-term monitoring and management of the property, and the Conservancy's administrative oversight costs.

Pre-acquisition planning activities funded by Caltrans will include demarking by GPS the 204 acres and preparing the resource management plan for the long term management of the CRLF habitat. The potential activities identified in the plan that may be deemed necessary for long term management to maintain the current status of the 204 acres for CRLF habitat include: repair of an eroded overflow ditch at the water supply pond; invasive species control; draining of the water supply pond (*but only in the event bullfrogs become unmanageable by other means*); and installation of a well and waterlines (*needed only if the pond must be drained*). These potential actions are discussed further in the "COMPLIANCE WITH CEQA" section, below.

Pursuant to an agreement between Caltrans and the Conservancy, Caltrans will separately fund the Conservancy's administrative activities in funding, site monitoring and reporting to Caltrans with respect to MALT's management of the easement.

Site Description: The location of the proposed project lies within the larger 1,194 acre project area described in the March 29, 2012 staff recommendation (Exhibit 2). The Barboni Ranch is located in Hicks Valley in Marin County. Specifically, the 204-acre portion proposed for this project is located in the northeastern corner of the ranch (Exhibit 3) and ranges in elevation from approximately 360 feet to over 800 feet above sea level. The property provides wildlife connectivity corridors along the forested riparian corridors and forested slopes. The habitat on the proposed project area appears consistent with the overall ranch land, which is described in a 2010 biological assessment as pastures, grasslands and mixed broadleaf evergreen forest. The 204-acre easement area includes a water supply pond, with documented apparent sub-adult CRLF, and an adjoining creek designated as a Creek Conservation Area ("CCA") that would be protected beyond the general restrictions in the easement through a required CCA Management Plan. The property provides CRLF with breeding, non-breeding, shelter, and dispersal habitats. Other species observed in the biological assessment include mule deer, turkeys, *Hyla* tree or chorus frog, pond turtle and newt. As discussed in the March 29, 2012 staff recommendation, the 204-acre mitigation area would be further restricted to its existing use (grazing) and have separate maintenance, management, monitoring, and enforcement requirements.

Project History: The history of the Conservancy's involvement with MALT on the Barboni project is described in the March 29, 2012 staff recommendation (Exhibit 2).

In 2010, MALT submitted a proposal to Caltrans to consider using a portion of the Barboni Ranch to mitigate the loss of CRLF dispersal habitat resulting from the Caltrans MSN project. After consulting with USFWS and lengthy consideration of other west Marin property(s), Caltrans recommended the Barboni project be selected and a conservation easement over 204 acres be purchased to satisfy its mitigation requirements; USFWS approved Caltrans' selection. In 2011, because of the Conservancy's long term experience working with MALT, Caltrans approached the Conservancy to receive Caltrans mitigation money to grant to MALT for the 204-acre easement, and for the associated management activities. Granting Caltrans funds to MALT through the Conservancy will facilitate a coordinated approach and consolidate MALT's oversight responsibilities to a single easement, and streamline its annual monitoring reporting

requirements. The Conservancy will serve as the communication conduit for MALT to Caltrans. The Conservancy will amend its existing grant agreement with MALT for the Barboni project approved on March 29, 2012 to incorporate Caltrans' mitigation, monitoring and reporting requirements.

PROJECT FINANCING

Acquisition

Coastal Conservancy (previously authorized)	\$1,000,000
Caltrans (this authorization)	714,000
Wildlife Conservation Board (WCB)	600,000
MALT (Public and private fundraising)	<u>1,372,000</u>
Acquisition Total:	\$3,686,000

Planning and Endowment

Caltrans (this authorization)	\$860,000
Planning and Endowment Fund Total:	\$860,000

At its March 29, 2012 meeting, the Conservancy authorized the disbursement of \$1,000,000 from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), appropriated to the San Francisco Bay Conservancy Program in fiscal year 2007-08.

The funding source for this authorization is a grant from Caltrans, and will be expended pursuant to and consistent with an agreement between Caltrans and the Conservancy for the funds, and under the grant agreement between MALT and the Conservancy.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project remains consistent with the requirements of Chapter 4.5 of the Conservancy's enabling legislation, Public Resources Code Sections 31160-31165, as discussed at length in the March 29, 2012 staff recommendation (Exhibit 2). Specifically, the proposed project is undertaken pursuant to Chapter 4.5 of Division 21 of the Public Resources Code (Sections 31160-31165) and, in particular, pursuant to sections §§31162(b) and 31161(protection of open space, scenic areas, and wildlife habitats of regional importance) and (§31162(c) (assistance with implementation of the goals of the Marin County General Plan).

Under Chapter 4.5, the San Francisco Bay Area Conservancy Program may award grants to protect open space resources of regional importance within the nine-county San Francisco Bay Area.

Under §31161, the Legislature found that agricultural land is part of an interconnected open-space system in the San Francisco Bay Region.

Consistent with §31162, the proposed agricultural conservation easement is located in Marin County, one of the nine bay-area counties, and will help to achieve several of the primary goals of the San Francisco Bay Area Conservancy Program by protecting open space, scenic areas, and wildlife habitats (§31162(b)), and assisting with the implementation of the Marin County General Plan (§31162(c)). The Marin County General Plan includes a specific policy supporting the acquisition of perpetual agricultural conservation easements. Acquisition of an agricultural conservation easement on the Barboni property will ensure that the open space character of this property will be forever protected.

In addition, the project satisfies all of the five criteria for determining project priority under §31163(c), as follows: 1) the project is fully consistent with and supported by adopted local plans, including the *County of Marin, Unit II (Northern Marin) Local Coastal Plan* as described in the Consistency with Local Coastal Program Policies below; 2) the project serves a multi-jurisdictional constituency, since it will preserve open space and scenic areas for the enjoyment of both local residents and visitors who come from across the region and the nation to the area in which the project is located; 3) the project can be implemented in a timely fashion: once funded, the easement acquisition is expected to occur within 3 months; 4) in the event the project is not implemented within this calendar year, the opportunity to purchase an easement could be lost due to lengthy delays inhibiting the property owners ability to undertake longer term planning for the entirety of his property, and 5) the Conservancy funding for the easement acquisition is matched by Caltrans mitigation funds, and by MALT with private donations.

**CONSISTENCY WITH CONSERVANCY'S 2007
STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

The proposed modified project remains consistent with goals and objectives of the Conservancy's Strategic Plan, as described in the March 29, 2012 staff recommendation (Exhibit 2).

**CONSISTENCY WITH CONSERVANCY'S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project remains consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on November 10, 2011, for all the reasons specified in the March 29, 2012 staff recommendation (Exhibit 2).

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The proposed project remains consistent with the local coastal program policies, as described in the March 29, 2012 staff recommendation (Exhibit 2).

COMPLIANCE WITH CEQA:

The proposed action would authorize the acquisition of a conservation easement over a portion of the Barboni Ranch in west Marin County, pre-acquisition planning activities, and activities for the long-term management of the property for the purposes of maintaining the 204 acre area in its current state for CRLF habitat.

As described in the March 29, 2012 staff recommendation (Exhibit 2) because the Barboni Ranch is comprised of two separate former dairy ranches, the Bassi Ranch and the Home Ranch, the project entails the acquisition of two easements. Thus, the project could occur in two phases, with each phase a separate project. Also as discussed in the March 29, 2012 staff recommendation, the Bassi Ranch easement acquisition, which involves no potential CRLF mitigation dispersal habitat, is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under 14 Cal. Code of Regulations Section 15325 because it involves the transfer of ownership interests in land to preserve open space and allow for continued agricultural use of the property. Staff filed a Notice of Exemption on April 2, 2012.

However, the Home Ranch easement acquisition includes 204 acres of CRLF habitat and requires maintenance that will be funded through the Caltrans endowment. Future maintenance actions are discussed in the CRLF Management Plan prepared by MALT for 204 acres of the Barboni Home Ranch, and summarized below. As discussed in the Project Summary section of this staff recommendation, in addition to the acquisition of an easement, the Caltrans endowment will fund pre-acquisition activities and long term management of the easement.

Pre-acquisition activities will include demarking by GPS the 204 acres and preparing the resource management plan for the long term management of the CRLF habitat. The activity of demarking by GPS the boundary of the 204 acres entails walking the boundary and digitally recording the boundary; no markers will be placed in the ground. Thus, this activity is not a project as defined by CEQA as it does not have the potential for a physical effect on the environment.

MALT has prepared a CRLF Management Plan for the long term management of the easement-protected property. The document identifies four potential activities that may be deemed necessary for long term management to maintain the current status of the 204 acres for CRLF habitat. These include: repair of an eroded overflow ditch at the water supply pond; invasive species control; draining of the water supply pond; and installation of a well and waterlines. The activities are discussed in detail, below.

Eroded Overflow Ditch

The repair of an eroded overflow ditch at the water supply would entail placing and manually staking down one or two bales of straw against the back of the pond overflow.

Invasive Species Control

Control of invasive species would include management of invasive plants, both terrestrial and aquatic (water supply pond), that could reduce breeding and protective cover habitat, and amphibian invasive species known to predated on CRLF, such as bullfrogs and non-native fish such as large-mouth bass. Invasive plants would be controlled by rotational grazing and hand removal using a weed whacker, hoe, or hands. This consistent with the current practices employed on the ranch for general non desirable plant control; none of the invasive plant species of concern have been observed on the property. Periodic control of bullfrogs and fish will be implemented when it is determined by MALT that their numbers are reducing the California red-legged frog population within the 204-acre easement area. Visual surveys will be used during the annual assessment to determine if the bullfrog and/or fish are present at undesirable levels within the easement. Giggling (hunting with the use of a spear) and other means listed in California Department of Fish and Game Code 5.05 for the take of adult and larval bullfrogs will be used.

Bullfrog egg masses will also be removed by hand. Nets or standard fishing equipment will be utilized to capture fish.

Draining the Water Supply Pond

Draining of the water supply pond would be undertaken only in the event that control of bullfrogs or bass by gigging or netting does not control their population in the pond. The pond would be drained by employing a large diesel powered water pump, lifting the water from the reservoir into the existing spillway. This action would be taken only in consultation with the USFWS and California Department of Fish and Game, and would be timed to ensure that the CRLF population, including eggs and tadpoles, is not impacted.

Installation of Alternate Water Supply

To avoid any down-time in the water supply, in the event water supply pond is drained to control bullfrogs and bass, an alternative water supply well will be drilled, and ancillary piping to a water storage tank will be installed. The well will be drilled in one of two locations. One sits at an elevation of 539' above sea level (site #1) and is approximately 158 feet above the level of the stream in the CCA. The second location sits at an approximate elevation of 835 feet above sea level (site #2).

Drilling will be accomplished using a truck-mounted drill unit contained on a heavy duty work truck, accompanied by a drilling water supply truck. The wellhead will be within a 5'x5' concrete pad. A solar water pump would be installed, and would have a 10'x15' footprint, including solar panels and controls. Two-inch PCV water lines would connect with onsite water storage tanks that are currently used to gravity-feed supply the ranch operations with water. The piping would be placed in a 12-inch deep trench dug with a small trenching machine. Soils removed for trenching will be re-filled in-place. Trenching will follow existing roadways to minimize disturbance.

Where practicable new water piping will be placed within and along existing roads or paths thus avoiding creating any new soil disturbances. Where impracticable to use existing roads or paths, the lines will be placed in locations free of sensitive resources and approved by Caltrans and USFWS. Piping will connect to existing water supply tanks in their current locations. One location will require installing approximately 800 feet of new piping, including a 50-foot section of steel pipe where it would necessarily cross a stream. The footings for the piping over the creek will be located outside of the creek banks avoiding the stream bank and creek bed. The second would require approximately 400 feet of PVC piping, only, as piping from this well would not cross any creeks.

Because the Bassi Ranch includes habitat for CRLF, a federally listed endangered species, and because the acquisition involves the funding of the CRLF Management Plan and associated activities for CRLF habitat, the issue arises whether these may be "unusual circumstances" which, under Guidelines, section 15300.2(c), would preclude the use of a categorical exemption for the Bassi Ranch acquisition. Section 15300.2(c) provides that a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Judicial decisions interpreting this language have concluded that the application of Guidelines, section 15300.2(c), involves "two distinct inquiries: 1) whether the project presents unusual circumstances; and 2

whether there is a reasonable possibility of a significant effect on the environment *due to* the unusual circumstances.

These inquiries are uniquely factual. Even assuming that the existence of the CRLF habitat or the CRLF management activities are an “unusual circumstance”, there still is no information that the acquisition of the conservation easement over the Bassi Ranch will pose any possible adverse environmental effect. First, the use of the property as CRLF habitat in conjunction with continued agricultural use and the CRLF Management Plan have both specifically been approved by the USFWS, the federal agency with regulatory authority over this federally listed endangered species. Indeed, USFWS has determined the project provides appropriate mitigation for loss of other CRLF habitat. In short, the CRLF habitat will be preserved and protected through the easement and through the management activities and the project will provide a beneficial effect and not any adverse effect on the CRLF habitat. Second, the CRLF management activities are specifically intended and designed to benefit, not cause adverse effect on, the CRLF.

In addition, Caltrans, SCC and MALT personnel, including a staff archeologist and botanist, conducted site visits to survey the property for botanical, cultural and historic resources to determine what, if any, impacts may occur to other possible environmental resources from CRLF management activities outlined above. No botanical, cultural or historic resources were found on the property or in the project areas.

Based on its review of the property and the projects, the Conservancy staff has determined there is no reasonable possibility of a significant effect on the environment due to the unusual circumstances, so as to preclude the use of a categorical exemption under the California Environmental Quality Act (see 14 Cal. Code Regs. §§15300, et seq., generally, and §15300.2 (c), specifically). Accordingly, upon Conservancy approval, staff will file a Notice of Exemption for the project.